

FD-92 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT
for the
District of Massachusetts
Boston Division

RECEIVED IN CLERK'S OFFICE
DATE 2/16/22

KEON MONTEIRO,
Plaintiff,

vs.

Record No. _____

CAROL MICHAS the Commissioner to
the Massachusetts Department of
Corrections;

DEPUTY COMMISSIONER, as the Deputy
to the Massachusetts Department of
Corrections; and

DIRECTOR OF DISCIPLINE UNIT, of the
Massachusetts Department of
Corrections.

Defendants.

In their official capacity.

SUBMIT TRIAL DEMAND

COVER FRONT

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

42 U.S.C. Section 1983

1 of 11

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Heon Monteiro
 All other names by which
 you have been known: None
 ID Number W109339
 Current Institution Souza-Baranowski Correctional Center
 Address One Harvard Road, P.O. Box 8000
Shirley M.A. 01464
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title *(if known)* and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Carol A. Mici
 Job or Title *(if known)* Commissioner for the Department of Corrections
 Shield Number (Not Applicable)
 Employer Governor Charles Baker
 Address 50 Maple Street
Milford M.A. 01757
City State Zip Code
☐ Individual capacity ☒ Official capacity

Defendant No. 2

Name (Unknown)
 Job or Title *(if known)* Deputy Commissioner of Prison Operations
 Shield Number (Not Applicable)
 Employer Commissioner Carol A. Mici
 Address 50 Maple Street
Milford M.A. 01757
City State Zip Code
☐ Individual capacity ☒ Official capacity

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Defendant No. 3

Name (Unknown)

Job or Title *(if known)* Director of the Discipline Unit

Shield Number (Not Applicable)

Employer Commissioner Carol A. Mici

Address 56 Maple Street

Milford M.A. 01951
City State Zip Code

☐ Individual capacity ☒ Official capacity

Defendant No. 4

Name N/A

Job or Title *(if known)* _____

Shield Number _____

Employer _____

Address _____

City State Zip Code

☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

- ☐ Federal officials (a *Bivens* claim)
- ☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

(1) Fourteenth (14) Amendment to the U.S. Constitution to protection to life, liberty, and property;
(2) Eighth (8) Amendment to the U.S. Constitution to prohibition of cruel and unusual punishment.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

(Not Applicable)

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

- (1) Defendants has and are acting under color statue and regulations in their official capacities by implimenting Code of Massachusetts Regulations (CMR) 103 D.B.C. Policies that deprives inmates of their Personal financial assests without reasonable due process;
- (2) Defendants, as described above, are subjecting inmates to cruel and unusual Punishment in their official capacities by Punishing inmates based on fabricating scientific evidence and/or using misleading forensic testing to Punish inmates.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain)

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

(Not Applicable)

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

- 1) Massachusetts Department of Corrections
- 2) Continuing actions

C. What date and approximate time did the events giving rise to your claim(s) occur?

August 18, 2021

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

(SEE ATTACHMENT PAGES)

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

- 1) Financial hardship due to lien and deprivation handling of financial (property) assets during COVID-19 Pandemic
- 2) Cruel and unusual punishment of having to be subjected to conditions of discipline sanctions, loss of money, restrictions to family communications and placement in segregation and/or restrictive housing units

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

- 1) The Court order Defendants to terminate the deprivation of inmates financial Property assets and the liens, thereof; because the cost of drug testing is the Department's financial responsibility and is not "restitution" for these purposes;
- 2) For the Court or Jury to determine whether or not the practices Defendants implement in the SAMP, NARK II test kit for H2 testing, and financial liens are in violation to any Constitutional rights or any other rights, laws, statutes; and
- 3) To order (a) reinstating any good time earning suspension, (b) reimbursing any financial costs, and (c) to remove any incident reports or Disciplinary Reports from the DOC's official records regarding the actions describe in this Complaint, and
- 4) To DIRECT the Defendants these relief, if granted, applies to all effecting inmates.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Concord (ME)

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☒ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Concord and Souza Baranowski Correctional Center

2. What did you claim in your grievance?

1) Inaccurate / Misleading forensic (NAAK II) testing for evidence
2) Unlawful liens and withdrawal of financial assets
3) Cruel and unusual punishment via Discipline Process

3. What was the result, if any?

And regards to sanctions, punishments, etc for disciplinary reasons cannot be brought for remedy on inmate Grievances. Grievances denied.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

Appeals to the Superintendent's Office

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

(Claims not Grievable under Grievance Procedures)

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

Notified D.B.C. Treasury Personnel, but to no avail.

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Most claims /allegation in this suit are not Grievable.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition.

N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: February 8, 2022

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Keon Monteiro

Keon Monteiro

W107339

Scuza-Baranowski Correctional Center

Shirley

City

M.A.

State

01464

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

COMPLAINT ATTACHMENT

No. 1

COMPLAINT ATTACHMENT

COMPLAINT ATTACHMENT

From Page 4 of 11 (iv) Statement of Claims (D)

"What are the facts underlying your claims?" (QUESTION)

Page 1 of 7

1. On the 18th of August 2021 the Plaintiff, Mr. Monteiro, was found to been guilty after an institution hearing of an institutional disciplinary infraction after prison investigators alleged legal documents in Mr. Monteiro cell tested positive for "synthetic cannabinoids" (also known as "K-2").¹
2. In the investigator's Disciplinary Report ("D-Report") the forensic testing used was a "NARK II" test kit. (SEE ATTACHED EXHIBIT No. 2.)
3. As a disciplinary Sanction, the D.O.C. ordered Mr. Monteiro to pay "restitution" in the amount of \$154.00 to pay for the D.O.C. to use drug testing on Mr. Monteiro for a period of six (6) months.²

1. Code of Massachusetts Regulations (CMA) 103 D.O.C 436 governs D.O.C. to discipline inmates with reports if the inmate is found to be in violation of Prison rules.

2. D.O.C.'s non-CMA governing policy "Substance Abuse Monitoring Program" (SAMP) mandates inmates; who has been guilty to be in possession, use of, or distribution of narcotics or intoxicants, to be subjected to random urine drug screening for a period of six months. Inmates are responsible for incurring the cost of each test.

Continuance

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4. Mr. Monteiro was also punished to 15 days in disciplinary segregation.
5. Mr. Monteiro was not in possession of, use of, or distribution to any narcotics or "synthetic cannabinoids".
6. The Practices of Forensic Analysis the D.B.C. uses to test for "synthetic cannabinoids" using the NARK II field test kit is not methodology accepted in the scientific community and is not practiced in Criminal Proceedings as evidence because this particular field test has been found to be either inconclusive and inaccurate for analyzing or testing synthetic cannabinoids.
7. The General use and authorization for a NARK II field test is for narcotics such as cocaine, ~~cocaine~~ cannabinoids, and heroin.³
8. The alleged testing in a NARK II field test of a piece of paper is not adequate.
9. Due to the unlawful Practices and enforcement of the SAMP and the forensic testing that Defendants use Mr. Monteiro has been, and will be, the victim to cruel and unusual punishment on being subjected to deprivation of financial asset and placement in segregation.
10. Furthermore, the inmate Disciplinary-Process does not include the Substance Abuse Monitoring Program ("SAMP") anywhere in it's CMP. Nor does the disciplinary-Process provides anywhere that an inmate must be ordered as "restitution" after being found guilty, to incur the Defendant's cost for D.B.C. drug testing equipment for an unrelated and/or no infraction for damaging any state property. The cost for drug testing on demand is not inmates responsibility.

Continuance
Page 3 of 7

11. As a result of these practices, Mr. Monteiro has been the victim of having been deprived of his property (financial assets) by having an unlawful lien placed against his property until he pay the \$154.⁰⁰ for the Defendants.

12. Since the D.B.C. has not made apart, or implemented as part of the disciplinary-process, the SAMP and inmates having to pay the cost for urine drug screening under the so-called SAMP, the D.B.C. financial officials has no right or authorization to either place liens on inmates property or deprive inmates of their financial assets without the inmate's written consent as CMA and Policy Provides.

13. However, what do authorized financial officials to freeze or withdrawal inmate's financial assets to which involves a disciplinary sanction is as follows:

103 Code of Massachusetts Regulation 405.16
INMATE FUNDS: Disciplinary-Process

The personal account of an inmate who has been ordered to make restitution after having been found guilty [of an offense] through the disciplinary process in accordance with 103 CMA 430.00 "Inmate Discipline" will automatically have their account frozen upon entering of the sanction in the 'disciplinary module' of IMS. The freeze... shall be in the amount of the ordered restitution. [...]



Continuance
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- 14 In contrast to that CMP, CMP 405.00 "Inmate Funds" (the same CMP as
Aucted in reference on page 3) provides the following:

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U.S. DISTRICT COURT
DISTRICT OF MASS.

- 15 Mr. Monteiro was not charged or found guilty of any allegations named
as part of the so-called SAMP.

- 16 Mr. Monteiro was not charged or found guilty of any allegations that
he tampered with, broke or destroyed any State property. Ordinarily, the actions
an inmate must have alleged to have committed and found guilty through
the disciplinary process; and provided "Restitution" as a Sanction.

- 17 What Mr. Monteiro was found guilty of was "Attempting to commit
any of the above offenses (Category 1), making plans to commit any of
the above offenses or aiding another person to commit any of the above
offenses shall be considered the same as the commission of the offense
itself."

Continuance

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18. Again, though the SAMP is not incorporated anywhere in the "disciplinary-Process" to authorize a lien or withdrawal on Mr. Monteiro's financial [Property] assets; the procedures that the Defendants implement and enforce and fail to correct allows prison officials to do so.
19. No part of the SAMP and its financial mandates on inmates financial [Property] assets are allowed to be contested or argued against at the same "disciplinary-Process" hearing where the same \$154.⁰⁰ restitution disciplinary sanction for SAMP incurring cost is imposed.
20. Nor can the same (as described above in Paragraph 19) be contested and/or brought as a contention on appeal of the guilty finding and financial sanction because the SAMP "is not part of the disciplinary-Process."
21. Essentially, while Mr. Monteiro can appeal the amount of restitution or the particular sanction in itself; the contention of SAMP's financial obligations are unlawful and cannot be enforced in the disciplinary-Process are voided for appeal.
22. To the contrary, when Mr. Monteiro attempted to raised these contentions and conflicting procedures through the Inmate Grievance Procedure he was barred from doing so because; although he grieved the SAMP procedures, prison officials stated grievances about "disciplinary procedures" are not allowed.

Continuance
Page 6 of 7

23. As a whole, and to which this Complaint is based off of, Mr. Monteiro—and every inmate who has been and will be—subjected to being deprived of his financial [PROPERTY] assets AND having an unlawful lien placed on his personal PROPERTY without no due Process or inadequate due Process.
24. As part of the same procedures in question (of the SAMP) Mr. Monteiro—and every inmate who has been and will be—subjected to the cruel and unusual punishment by being punished to disciplinary segregation; loss of family visits and other family communications; and loss of commissary based on the defendants' officers and employees using an inadequate, inclusive, and known to be wrongful used forensic drug-test (NARK II) for specific analysis on so-called "synthetic cannabinoids." which can not be scientifically tested with either a positive or negative conclusion because information provided by NARK II official web-pages lists the narcotics the test was forensically manufactured to provide field test analysis for. No "synthetic" narcotics especially "synthetic cannabinoids" (aka "K-2").

* * * * *

Continuance
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25. Mr. Monteiro contends on this Complaint that if no rule of law or previous case proceeds as of yet that the Defendants official Policies and Procedures — as alleged and brought suit against in this Complaint — are (1) unlawful, (2) illegal, (3) abuse of discretion, (4) and in violation to rights secured by the Constitution Mr. Monteiro asks that this Court considered) (as brought under relief in this Complaint) Federal Questions into whether or not these allegations are as described above in this Paragraph.

[END OF PAGES 7 of 7 ATTACHMENTS]